

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

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OA.No.1004 of 1994

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Dated New Delhi, this 9th day of March, 1995

Hon'ble Mr Justice S. C. Mathur, Chairman

Hon'ble Mr K. Muthukumar, Member(A)

Shri Puran Singh  
S/o Shri Mohabat Singh  
C/o Shri Rajinder Singh  
House No.701  
Village & Post Office, Bewara  
DELHI-39

... Applicant

By Advocate: Shri V. P. Sharma

Versus

1. Union of India, through  
Secretary,  
Ministry of Works & Housing,  
Nirman Bhawan,  
NEW DELHI.
2. The Superintending Engineer,  
Delhi Central Circle-IV, C.P.W.D.,  
I. P. Bhawan,  
NEW DELHI.
3. The Executive Engineer,  
Parliament Construction Division-I,  
C.P.W.D.  
NEW DELHI.

... Respondents

By Advocate: Shri S. C. Sharma

O R D E R  
(Oral)

Mr Justice S. C. Mathur, Chairman

Shri Puran Singh who was engaged in the Central Public Works Department (CPWD) as a casual labour, has directed this application against alleged termination of his service. The plea of the respondents is that the applicants' services were not terminated, but he himself abandoned the engagement. At this stage, we feel it necessary to dispose of this application as pleadings are complete.

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2. The facts about which there is no dispute, are as follows:

The applicant was engaged with effect from 3.4.85 as Beldar in the Parliament Construction Division-I, CPWD, New Delhi. His name continued to remain in the Muster Roll and he was given work according to availability. From 9.4.92 till 20.12.93, the applicant did not report for duty. He reported for duty on 21.12.93.

3. The applicant's claim is that after 8.4.92 he had fallen ill and it was on account of illness that he could not report for duty, but he sent intimation in that behalf on a Post Card. The date on which the Post Card was sent has not been disclosed in the application. After reporting himself for duty, the applicant claims to have produced medical certificates in support of his plea of illness. Copies of the medical certificates have been collectively placed on record as Annexure A-8. These are dated 9.4.92, 17.10.92, 13.8.93 and 17.12.93. The first two certificates have been issued by the Medical Officer In-charge, Primary Health Centre, Bulandshahr and the other two have been issued by Medical Officer In-charge, Primary Health Centre, Nauhijheel, Mathura. All the four medical certificates have been signed by the same Doctor. From this, it appears that the Doctor who was previously posted at Bulandshahr had subsequently been transferred to Mathura. In the present application the claim of the

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applicant is that before he could be treated to have abandoned the engagement, it was obligatory for the respondents to issue him notice requiring him to join by a specified date. The applicant asserts that he had all the intention of remaining in engagement, but he was prevented from reporting for duty by the illness. In support of his submission that notice was required, the applicant has cited a decision of this Tribunal in O.A. No.78/87 decided on 16.3.90-Beer Singh Union of India & others.

4. In support of the factual averment that intimation of illness had been sent, the applicant relied upon a letter allegedly written by the Assistant Engineer of the concerned Division on 6.1.94 to the Executive Engineer, a copy of which has been filed as Annexure A-1.

5. The submissions of the learned counsel for the applicant have been countered by the learned counsel for the respondents, who has submitted that neither the factual position asserted by the applicant is established from the evidence on record nor the legal position is in favour of the applicant. He invites our attention to the explanation given by the Assistant Engineer who wrote the letter dated 6.1.94. The affidavit has been filed as Annexure R-1 to the counter reply of the respondents. In Annexure A-1, the author of the letter has stated that the applicant had sent the intimation of his illness, but the letter of intimation is not available on record. In

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Annexure R-1, the facts stated in the letter dated 6.1.94 have been controverted and it has been stated that no information regarding illness of the applicant was available in the office of the author of the letter. It is also stated that <sup>on</sup> 13.11.92 he was not posted in the Division in which the applicant was working prior to 9.4.92 and that, at that time, he was Junior Engineer in P.W.D. Circle No.I (Delhi Administration), M.S.O. Building, New Delhi. In paragraph-4 of the said affidavit he has stated that he has no knowledge of receiving any Postcard regarding illness of Shri Puran Singh by the office of Assistant Engineer-II, Parliament Works Division No.I, Ferozshah Road, New Delhi before 13.11.92. The question for consideration is whether the applicant's factual assertion that he had sent intimation is true or not. One thing that strikes prominently is the absence of the date on which the letter of intimation was sent. The learned counsel for the respondents has rightly pointed out that in his joining report the applicant nowhere mentions about the intimation allegedly sent by him prior to joining. A copy of the joining report dated 21.12.93 is Annexure A-6 to the application. Indeed this joining report does not make any mention of any prior intimation. Accordingly, we are inclined to accept the submission of the learned counsel that the applicant has failed to establish that he had sent any intimation of illness prior to report for duty on 21.12.93.

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6. In the preliminary submission raised in the counter reply it has been stated that the application is liable to be thrown out on the ground that the applicant has not approached the Tribunal with clean hands. It has been stated that the applicant fabricated the story of sending intimation prior to 21.12.93. We are satisfied with the averments made by the learned counsel for the respondents. Assistant Engineer, Shri A. Mallick had no occasion to have access to the letter alleged to have been sent by the applicant intimating his illness. The applicant does appear to have fabricated documents in order to sustain his claim in the present application.

7. So far as the legal position is concerned, the judgement relied upon by the learned counsel for the applicant has no application to the facts of the present case. Beer Singh was in the employment of the Railway administration. He had admittedly acquired the status of a temporary employee as Railway administration has got its own rules regulating the engagement and disengagement of casual labour. The judgement of the Tribunal is based on those rules.

8. In the judgement of the Tribunal there is reference to a Supreme Court decision in M/s Jeewanlal(1929) Limited vs. Its Workmen, AIR 1961 SC 1567. In paragraph-6 of the judgement at page-1569, it has been observed by their Lordships thus:

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"...It would thus always be a question of fact to be decided on the circumstances of each case whether or not a particular employee can claim continuity of service for the requisite period or not. In our opinion, therefore, the view taken by the tribunal is substantially right though we would like to make it clear that in addition to the cases where according to the tribunal continuity of service would come to an end there would be the class of cases where long unauthorised absence may reasonably give rise to an inference that such service is intended to be abandoned by the employee."

This case has full application to the facts of the present case. The applicant reported for duty after remaining absent for more than one year and eight months. This long absence without intimation of illness leads to reasonable inference that the applicant intended to abandon the engagement with the administration. We have mentioned hereinabove that two medical certificates were obtained by the applicant from the Medical Officer at Bulandshahr and two from the Medical Officer at Mathura. If the applicant could travel from Bulandshahr to Mathura to claim a medical certificate, he could also have travelled to New Delhi to either give the application personally or to register his presence.

9. The learned counsel for the respondents has invited our attention to a policy decision reflected in Annexure R-2 to the counter reply which is dated 11.3.93. The policy decision reflected in this Office Memorandum issued from the office of the Director General of Works, Central Public Works Department shows that an embargo has been

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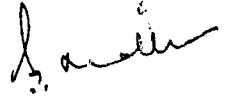
imposed on re-engagement of casual workers.

10. In view of above, the application fails and is hereby dismissed with costs to the respondents. Interim order if any operating, shall stand discharged.



(K. Muthukumar)  
Member (A)

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(S. C. Mathur)  
Chairman